

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0212P

Sales and Use Taxes

Calendar Years 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer sells petroleum equipment to construction contractors, retail petroleum industries, transportation companies, and to other retailers and service providers. Taxpayer also provides repair services to gas stations on petroleum equipment.

At audit, it was determined that the taxpayer failed to charge tax on all of its cash sales. Cash sales were examined for the months of March and April 2000. Taxable sales on which no sales tax was charged was used for projecting additional cash taxable sales to the remainder of 2000, 1998, and 1999. In addition, sales tax registers were reviewed for each month of the audit period. Major discrepancies were noted. Tax collected was underreported for January through April 1999 and tax collected was over reported for May through December 1999. Tax collected was underreported for April and August 2000 and over reported for January through March, June, July, and September through December 2000. In addition, taxpayer had unsupported exempt sales. Exempt sales were examined for the months of March and April of 2000 for which no exemption certificates were on file. Taxpayer also made purchases of office supplies, shipping supplies, space rental, subscriptions, furniture, computer equipment, and other miscellaneous items.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that audits in previous years have resulted in very little additional tax being due. Taxpayer further states that the additional tax resulted from its previous controller who was lax in enforcing the systems that have been in place for several years.

Taxpayer remitted less than seventy percent (70%) of its use tax due in all years at audit. Although the percentage of sales tax not remitted amounted to less than three percent (3%) of its total, taxpayer should have had controls in place to assure that sales tax was collected and remitted on all taxable sales. More than fourteen thousand dollars (\$14,000) in sales tax was not collected nor remitted. No penalty was assessed for the use tax in the year 2000 because the taxpayer received a refund for sales tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to self assess and remit use tax on more than thirty percent (30%) of its untaxed purchases and failed to have procedures in place to assure that sales tax was collected and remitted on its taxable sales. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.